

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Valerie McDonald,

Plaintiff

v.

Capital One Auto Finance and Carmax Auto  
Superstores, Inc.,

Defendants

Case No.: 2:22-cv-00314-JAD-BNW

**Order Granting Carmax's Motion to  
Dismiss**

[ECF No. 30]

Pro se plaintiff Valerie McDonald sues Capital One Auto Finance and Carmax Auto Superstores, Inc. for violations of the Telephone Consumer Protection Act (TCPA) and the Truth in Lending Act (TILA). Carmax moves to dismiss McDonald's second-amended complaint, arguing that her allegations are too thin to state any claim against Carmax and her TILA claim is barred by the statute of limitations. McDonald opposes the motion and clarifies in her opposition that her TCPA claim applies only to Capital One and not Carmax. Because Carmax has demonstrated that McDonald's remaining TILA claim is time-barred under the act's one-year statute of limitations for civil claims, I grant Carmax's motion and dismiss McDonald's claims against it.

**Discussion**

Carmax argues in its motion to dismiss that (1) McDonald failed to provide enough factual allegations in her complaint to state a TCPA claim against Carmax and (2) McDonald's TILA claim is time-barred by the act's one-year statute of limitations. In her opposition to Carmax's motion to dismiss, McDonald concedes that she intended her TCPA claim to apply to Capital One only, so the lone claim against Carmax is her TILA claim.

1 Carmax argues that McDonald's TILA claim is time-barred by the act's one-year statute  
 2 of limitations. A statute-of-limitations defense may be raised by a motion to dismiss "if the  
 3 running of the statute is apparent on the face of the complaint."<sup>1</sup> "When a motion to dismiss is  
 4 based on the running of the statute of limitations, it can be granted only if the assertions of the  
 5 complaint, read with the required liberality, would not permit the plaintiff to prove that the  
 6 statute was tolled."<sup>2</sup> Under TILA's statute of limitations, a plaintiff must file a civil claim under  
 7 the act "within one year from the date of the occurrence of the violation" to be timely.<sup>3</sup>

8 McDonald alleges that she completed an online credit application with Carmax sometime  
 9 in July 2018 and purchased a vehicle from Carmax "on or around July 30, 2018."<sup>4</sup> But  
 10 McDonald didn't file her lawsuit until February 22, 2022,<sup>5</sup> more than three-and-a-half years after  
 11 the alleged TILA violations occurred. In her opposition, McDonald fails to address Carmax's  
 12 statute-of-limitations argument whatsoever, devoting the bulk of her response to arguments about  
 13 the merits of that claim.<sup>6</sup> She also points to nothing in her complaint that would justify tolling  
 14 the limitations period. Because McDonald's claim is untimely on its face and she has not shown  
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17 <sup>1</sup> *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

18 <sup>2</sup> *Id.*

19 <sup>3</sup> 15 U.S.C. § 1640(e).

20 <sup>4</sup> ECF No. 26 at 3.

21 <sup>5</sup> *Id.*

22 <sup>6</sup> McDonald also submits a "response" to Carmax's reply, ECF No. 39, but I disregard it because  
 23 it is an unauthorized surreply filed without first obtaining leave of court. *See* Local Rule 7-2(b)  
 (explaining that the final brief permitted in motion practice is the movant's reply and warning  
 that "[s]urreplies are not permitted without leave of court"). Even if I were to excuse that  
 procedural impropriety and consider its contents, it would not save the plaintiff's TILA claim  
 from dismissal because it, too, fails to address the statute-of-limitations problem.

1 that she could allege facts to make her claim timely, her claim is time-barred. So I grant  
2 Carmax's motion and dismiss this lone remaining claim against Carmax.

3 **Conclusion**

4 IT IS THEREFORE ORDERED that Carmax's motion to dismiss [ECF No. 30] is  
5 **GRANTED. McDonald's claims against Carmax are DISMISSED with prejudice and**  
6 **without leave to amend** because amendment would be futile. The Clerk of Court is directed to  
7 **TERMINATE** Carmax Auto Superstores, Inc. as a party to this case. This case proceeds on the  
8 claims against Capital One only.

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11 U.S. District Judge Jennifer A. Dorsey  
12 September 12, 2022  
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